LIEN CHONG CREDIT AND LEASING SDN. BHD.

v.

SRI SAGA HOLDINGS SDN. BHD. & ORS.

COURT OF APPEAL, KUALA LUMPUR
DATO' DR. ZAKARIA MOHD YATIM JCA
DATO' MAHADEV SHANKAR JCA
DATO' V.C. GEORGE JCA
[CIVIL APPEAL NO: J-02-217-94]
21 AUGUST 1996

CIVIL PROCEDURE: *Summary judgment - Loan agreement - Amount repayable conceded by borrower - Whether a clear case for summary judgment.*

The appellant, a licenced money-lender, gave a loan of RM365,000 to the first respondent upon the security of a charge executed by the latter, and a guarantee executed by the second to the sixth respondents. The first respondent defaulted in payment but had agreed to settle the loan amounting to RM740,000 then after obtaining another loan from Malaysia Credit Finance Bhd. (MCRB). The appellant released the charged land upon the arrangement that the first respondent would charge the same to obtain another loan from MCRB and pay the outstanding sum aforesaid.

The first respondent only paid the appellant RM35,000 out of the promised RM740,000. The appellant thereupon filed a claim for the sum and applied for summary judgment against the respondents. The respondents in their statement of defence denied the allegations in the statement of claim, but the first respondent, by a letter dated 31 March 1988, conceded that the total amount repayable to the appellant was RM740,000. The learned trial Judge refused summary judgment on the ground that the interest rate was excessive and the appellant hence appealed.

Held:

Per Zakaria Mohd Yatim JCA (delivering the judgment of the Court):

This is a plain and obvious case for summary judgment. This Court therefore accordingly allowed the appeal with costs and entered judgment for the appellant as prayed.

[Appeal allowed]

[Bahasa Malaysia *Translation of Headnotes]*

PROSEDUR SIVIL: *Penghakiman terus - Perjanjian pinjaman - Jumlah yang kena di bayar-balik diakui oleh peminjam - Samada merupakan satu kes yang jelas bagi penghakiman terus.*

Perayu yang merupakan pemberi pinjaman wang berlesen, telah memberikan pinjaman sebanyak RM356,000 kepada responden pertama atas jaminan satu gadaian yang disempurnakan oleh pihak yang terkemudian, dan atas satu gerenti yang disempurnakan oleh responden-responden kedua hingga keenam. Responden pertama telah memungkiri pembayaran tetapi telah bersetuju untuk menjelaskan pinjaman yang berjumlah sebanyak RM740,000 ketika itu selepas mendapatkan satu pinjaman yang lain daripada Malaysia Credit Finance Berhad (MRCB). Perayu telah melepaskan tanah yang digadaikan itu atas persetujuan bahawa responden pertama akan menggadainya bagi mendapatkan satu pinjaman yang lain daripada MRCB dan justeru itu membayar jumlah yang masih belum jelas sepertimana yang tersebut di atas.

Responden pertama hanya membayar kepada perayu RM35,000 daripada jumlah yang dijanjikan sebanyak RM740,000. Perayu hasil daripada itu, telah memfailkan satu tuntutan bagi mendapatkan jumlah tersebut dan memohon untuk mendapatkan penghakiman terus terhadap responden-responden. Responden-responden dalam pernyataan pembelaan mereka telah menafikan pengataan-pengataan tuntutan tersebut, tetapi responden pertama, melalui surat bertarikh 31 Mac 1988, mengakui bahawa jumlah yang kena dibayar balik kepada perayu adalah sebanyak RM740,000. Hakim perbicaraan yang bijaksana telah menolak penghakiman terus atas alasan bahawa kadar faedah adalah keterlaluan dan perayu-perayu dengan itu telah merayu.

Diputuskan:

Oleh Zakaria Mohd Yatim HMR (menyampaikan penghakiman Mahkamah)

Ini adalah satu kes yang jelas untuk penghakiman terus. Mahkamah ini dengan itu membenarkan rayuan dengan kos dan memberikan penghakiman kepada perayu sebagaimana permohonan.

[Rayuan dibenarkan]

For the appellant - L. Parthiban, M/s. L. Parthiban & Assoc.
For the respondent - Nur'aini Mohammad, M/s. Kamarudin & Partners

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JUDGMENT

Zakaria Mohd Yatim JCA

This is an appeal against the decision of the learned Judge who dismissed the appellant's application for summary judgment against the respondents. After hearing both parties, we allowed the appeal with costs and entered judgment for the appellant as prayed. Our decision was unanimous.

The appellant is a licenced money lender. The first respondent is a company incorporated in Malaysia. The second, third, fourth, fifth and sixth respondents are guarantors. By a loan memorandum signed by the appellant and the first respondent on 7 May 1986, the appellant agreed to lend the first respondent RM365,000. The rate of interest was 12% per annum. The loan was duly granted to the first respondent. As security for the loan the first respondent charged a piece of land EMR69, Lot No. 124 in Mukim Jelutung. Under the terms of the memorandum the date of repayment was 7 May 1986.

By a guarantee agreement dated 7 May 1986 the second, third, fourth, fifth and sixth respondents guaranteed repayment of the loan by the first respondent.

The first respondent defaulted in payment. The first respondent agreed to settle the loan amount after obtaining another loan from Malaysia Credit Finance Bhd. The first respondent asked the appellant to release the charged land so as to enable it to obtain the loan from Malaysia Credit Finance. The first respondent agreed to pay the appellant RM740,000 towards the settlement of the loan. The appellant released the charge.

The first respondent paid the appellant RM35,000 leaving a balance of RM705,000. The appellant's claim is for RM705,000 together with interest at the rate of 8% from the date of the writ to the date of settlement.

The respondents in their statement of defence merely denied the allegations contained in the statement of claim. The first respondent denied that a valid agreement was concluded with the appellant. It said that even if an agreement was signed no money was ever handed to the first respondent.

The learned Judge said that the interest charged was excessive. There is no affidavit by the first respondent to say that the interest was excessive. The first respondent in fact conceded in a letter dated 31 March 1988 that the total amount repayable to the appellant was RM740,000.

In our opinion this is a plain and obvious case for summary judgment. We accordingly allowed the appeal with costs and entered judgment for the appellant as prayed in the statement of claim. Costs to be taxed and deposit to be refunded to the appellant.

Reported by W.A. Sharif